

LABOR-MANAGEMENT RELATIONS BOARD
RULES AND REGULATIONS

**PROPOSED AMENDMENTS based on comments received during and prior to the
Board’s Rulemaking Meeting convened on August 28, 2018.**

1 PURPOSE

1.1 Statement of Purpose. The purpose of these ~~rules~~ Rules and Regulations (hereinafter the “Rules”) promulgated by the Labor-Management Relations Board (hereinafter the “Board”) is to implement and clarify the City of Albuquerque Labor-Management Relations Ordinance (Sec. 3-2-1 et seq., ROA 1994) ~~(hereinafter “Ordinance”)~~ and to establish fair and expeditious procedures that further the purposes of that Ordinance, which are: (1) to guarantee public employees the right to organize and bargain collectively with the employers; (2) to promote harmonious and cooperative relationships between public employers and public employees; and (3) to protect the public interest by assuring, at all times, the orderly and uninterrupted operation and functions of the City government. These ~~rules~~ Rules should be interpreted consistently with the ~~Labor-Management Relations Ordinance (hereinafter the Ordinance)~~ as presently written or as later amended. In the event of any conflict or inconsistency, the language of the Ordinance shall control. These rules shall be construed and administered so that matters are heard on the merits to secure the just, speedy and inexpensive determination of every action.

1.2 Authority. These ~~rules~~ Rules are enacted by the Board pursuant to powers stated in ~~Sections 3-2-10(A) -2and 2-6-1-4(C)(1), ROA 1994~~ the Ordinance. A current version of these ~~rules~~ Rules shall be maintained at the offices of the Clerk of the City of Albuquerque. The Board shall have authority pursuant to the Ordinance to issue scheduling and other orders in all pending matters on the Board’s own accord or in the Board’s discretion in response to a motion or other request of the Board. The Board may impose fines and other sanctions which it deems appropriate for any failure to comply with these Rules and the Board’s orders. Any fines assessed by the Board shall be paid as ordered by the Board.

- 1.3 Effective Date. These Rules shall be in effect on the date approved by majority of a quorum of the Board.
- 1.4 Title and Citation. Citation to the Rules shall be in the format of “LMRB Rules, Sec. 1.4,” for example, to cite this Section of the Rules.
- 1.5 Application of the Rules. The Rules last enacted by the Board shall supersede all previously enacted Rules and shall govern all actions a) filed on or after the date of enactment and b) pending on the date of enactment prospectively.
- 1.6 Computation of Time and Dates. All days referenced in these Rules are calendar days, including weekends and holidays. The Board may impose deadlines in its rulings and orders, and in the absence of a specific date, calendar days shall be considered to be the default calculation unless otherwise specified on the record. If a deadline date falls on a weekend or city holiday, the next work day will be the deadline.
- 1.7 Rules of Construction. The hearings shall be conducted in an orderly and informal manner without adherence to the technical rules of evidence. Sec. 3-2-10(A), ROA 1994. Where the Rules and the Ordinance are silent, the Rules of Civil Procedure for the District Courts of the State of New Mexico and the Local Rules of Second Judicial District Court and case law annotations may be instructive and considered by the Board.

2 NOTICE

- 2.1 General Notice/Meeting Requirements. At the first meeting, after these ~~rules~~ Rules and regulations are adopted, and each year thereafter, at the first meeting of the reconstituted ~~Labor Management Relations Board~~ Board, the Board shall pass a resolution determining the schedule ~~and reasonable public notice~~ of Board meetings. Notice of all Board meetings, including regular and rescheduled meetings, shall be posted on the City Clerk’s website at least seventy-two (72) hours in advance of the meeting. For the purposes of regular meetings, notice requirements are met if notice of the date, time, place and agenda, containing a list of specific items of business to be discussed or transacted at the meeting, is posted in the lobby on the first floor of the Albuquerque/Bernalillo County government Center, Albuquerque, New Mexico and by informing the public how to

obtain a copy of the agenda and on the City Clerk's website. NMSA 1978, Sec. 10-15-1(F) and Sec. 2-6-1-4(B)(2), ROA 1994.

2.2 Rulemaking Meetings. Rulemaking procedures shall be followed pursuant to Sec. 2-6-1-4(C), ROA 1994. Notice of the Board's intention to consider the adoption or amendment of a rule or regulation shall be given in the same manner as described in Section 2.1. and all such notices shall be given at least fourteen (14) days prior to the meeting at which the proposed rule or regulation will be considered. All such notices shall state the time and location of the meeting, contain a brief description of the proposed rule or regulation, and include the full text of the proposed rule or regulation on the City Clerk's website.

2.3 Open Meetings. All meetings of a quorum of the Board shall be open to the public. The Board may close a meeting to the public only if the subject matter of such discussion or action is exempted from the open meeting requirement under Section 10-15-1(H) of the State of New Mexico Open Meetings Act.

3 QUORUM

3.1 All three members of the Board are required to be present to constitute a quorum.

4 HEARINGS

4.1 Record of Proceedings. All meetings of the Board shall be audio-recorded. The Board shall keep audio ~~tapes~~ recordings of rulemaking, unit determination, and prohibited practices hearings for period of at least three years following the close of the proceeding in which the hearing is held, or three years following the close of the last judicial or Board proceeding (including any appeal or request for review) related to the case in which the hearing is held, whichever is later, or such longer period as may be required by law. Minutes of Board meetings shall be permanent records and shall be maintained in the City Clerk's office. The Board shall keep written minutes including date, time, place, name of members present, the substance of proposal matters considered, and a record of any decisions and votes. Draft Minutes must be prepared within ten working days after the meeting. NMSA 1978, Sec. 10-15-1(G). Official (Board-approved) Minutes shall be posted on the City Clerk website. Sec. 2-6-1-4(B)(3), ROA 1994.

- 4.2 Notice to Parties. The Board secretary shall provide to each party notice of the date, time and place of all scheduled hearings.
- 4.3 Representation of a Party. A party may represent himself or be represented by counsel or other representative. Any representative of a party shall file with the Board a signed notice of appearance, stating the name of the party, the title and case number in which the representative is representing the party, and the name, address, and telephone number of the representative. The filing of a pleading containing the above information is sufficient to fulfill this requirement. All individuals who appear before the Board shall conduct themselves with civility and a respectful demeanor and comply with the Board's procedures and orders.
- 4.4 Ex Parte Communications. Parties shall not attempt to contact Board members in the absence of, or without the knowledge of, the opposing party.
- 4.5 Complaints. Prohibited practices, or any other complaint filed with the Board under the Ordinance, must provide enough information that the Board and responding party can understand what the alleged violation is and how it happened. If applicable, the prohibited practice or complaint must include: (1) individuals or entities involved; (2) time and place of any incident; and (3) the actions or inactions the alleged violation is based on. A complaint or allegation is insufficient which merely states or paraphrases a prohibited practice listed in the Ordinance or a type of cause of action.
- 4.6 Answers. A responding party is required to file its initial answer to a prohibited practice complaint and serve the opposing party within five (5) working days pursuant to Sec. 3-2-9(D) of the Ordinance. The respondent must answer each of the enumerated allegations in a complaint in detail no later than thirty (30) days after the complaint was filed.
- 4.7 Motion for More Definite Statement. If a complaint or other pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the responding party may move for a more definite statement before filing a responsive pleading. Any party may file a motion to point out the defects of the complaint or pleading and request details necessary for a response. Amendments to pleadings are favored, and the right

thereto should be liberally permitted in the furtherance of fairness and judicial economy. If the motion to amend is granted by order of the Board, the amended complaint shall be filed within thirty (30) days unless the Board concludes otherwise. In the event of failure to timely comply with the order of the Board, the Board may strike the pleading to which the motion was directed or make such order as it deems just.

4.8 Conference of the Parties and Proposed Stipulated Scheduling Orders. The parties shall meet within forty –five (45) days of the filing of the complaint to confer and prepare a statement of the issues, stipulated facts and disputed facts to be submitted to the Board and a proposed scheduling Order in the form attached as Appendix A to these Rules. If a settlement agreement is reached, the parties shall prepare and submit a proposed Order of Dismissal to the Board. If settlement negotiations are ongoing and the parties wish for additional time, the parties shall submit an agreed to/ stipulated request to stay the proceedings that proposes the additional time required. Any party may submit to the Board a request for a Pre-Hearing scheduling conference or a hearing on the merits.

4.9 Discovery. The parties shall have a right to discovery limited to ten (10) interrogatories, ten (10) requests for production, and ten (10) requests for admission. No additional discovery shall be allowed except by order of the Board. Upon written request by any party, the Board shall may order either party to produce for inspection and copying any relevant records, papers, documents or other tangible evidence in the possession of or available to that party. ~~The parties shall have a right to discovery limited to depositions, ten (10) interrogatories, ten (10) requests for production, and ten (10) requests for admission.~~ Responses or objections to discovery shall be served within thirty (30) days of receipt of any discovery requests. Disputes regarding discovery requests shall be decided by the Board. Failure to comply with discovery orders shall may result in sanctions proportional to the offense, including, but not limited to, fines, limitation of defense and dismissal of action.

4.10 Consolidation, Joinder and Bifurcation. The Board may join or separate cases for any reason if it would expedite final resolution of the cases and would not adversely affect the interests of any of the parties.

4.11 Motions and Pleadings Standards. All motions, responses and replies, except motions made during a hearing, or as may be permitted by the Board, shall be in writing and shall state with particularity the grounds and the relief sought. Allegations in pleadings must include a statement of specific facts in support of the allegations.

4.12

4.13 Deadlines and Scheduling Orders. The Board shall set deadlines in a scheduling order using the form set forth in Appendix A.

Any non-dispositive defense, objection, or request that can be determined prior to the hearing on the merits may be raised by filing a written motion at least fifteen calendar days prior to the hearing on the merits. Any response to such motion shall be filed within ten calendar days after the filing of the motion. The Board shall rule on all non-dispositive motions as soon as practicable

Any motion that raises an issue that may be dispositive of the case shall be filed within ~~thirty days of the time when the movant knew or should have known of the issue, or within thirty days of the filing of the answer to the complaint, whichever is later.~~

4.14

4.15 Motion and Response Page Limits. Motions and Responses shall not exceed fifteen (15) pages in length and responses fifteen (15) pages without consent of the Board.

4.16 Motions to Extend Deadlines Imposed under Rule or Order. The Board may grant an extension upon a finding of good cause shown.

4.17 Attachments and Exhibit Page Limits. Any attachments or exhibits to a motion shall be limited to fifty (50) pages except by leave from the Board.

4.18 Witnesses and Exhibits.

a) ~~All witnesses must be identified in writing to the Board and the opposing party at least five calendar days prior to the hearing. Witnesses not designated in accordance herewith shall not be permitted to testify except at the discretion of the Board for good cause shown.~~

- b) City employees who would otherwise be on duty that are designated by either party shall be relieved from their normal duties for a period of time necessary to appear at scheduled hearings and testify as witnesses ~~shall appear at scheduled hearings and shall be relieved from their normal duties for a period of time necessary to testify~~. The issuance of a subpoena for the appearance of city employees to testify during normal work hours is not required. If a City employee would not otherwise be on duty (e.g., would be on vacation or not at work, etc.), the party calling that witness is responsible for assuring the witness's appearance or obtaining an appropriate subpoena from the Board.
- c) Each party is responsible for contacting its own witnesses in advance of any hearing and notifying them of the time they must appear to testify. Either party may request a continuance from the Board based on the absence of a witness.
- d)
- e) Exhibits not identified in accordance with the scheduling order shall be not permitted or allowed into evidence except at the discretion of the Board.

4.19 Subpoenas

- a) Any party to a proceeding in which a notice of hearing has issued may file a written request with the Board for the issuance of a subpoena for witness testimony or a subpoena for the production of documents to procure testimony or documents at the hearing. A subpoena request shall state the name and number of the case and be submitted to the Board no later than ten days before the hearing. The request shall identify the person(s) or document(s) sought and state the general relevance to an issue in the case of the testimony or document(s) sought. The Board may refuse to issue a subpoena where the request fails to meet these requirements, or where it appears that the document(s) or testimony sought are not relevant to issues in the case.
- b) The Board may issue subpoenas on its own initiative, in which case a showing of relevance is not required, and a notice of hearing need not have been issued.
- c) Any applicable witness and travel fees and costs associated with service of process shall be the responsibility of the party requesting the subpoena. The Board may require these fees and costs be presented in advance of the issuance of any subpoena.

4.20 Evidence Admissible. In general, Hearings-hearings shall operate in accordance with the New Mexico case common-law evidentiary standards applicable to administrative hearings. Hearings shall be conducted in an orderly and informal manner without adherence to the technical rules of evidence required in judicial proceedings. The Board may admit and give probative effect to any evidence, including affidavits, as the Board deems appropriate.

4.21 Burden of Proof

- a) No party shall have the burden of proof in a representation or fact-finding proceeding. The Board shall have the responsibility of developing a fully sufficient record for a determination to be made, and may request any party to present evidence or arguments in any order.
- b) In a unit clarification proceeding, a party seeking any change in an existing appropriate unit, or in the description of such a unit, shall have the burden of proof and the burden of going forward with the evidence.
- c) In any prohibited practices proceeding, the complaining party has the burden of proof and the burden of going forward with the evidence.

4.22 Decision

- a) Final Decision and Order. A ~~final~~ written final decision and order by the Board shall be issued as soon as practicable. A copy of the Board's written final decision and order shall be maintained at the offices of the Clerk of the City of Albuquerque. Copies shall also be sent via email or First Class mail to the parties.
- b) Reinstatement of Employment. In the event a Board decision orders an employee's reinstatement of employment, the employee shall be reinstated within ~~ten-thirty~~ (1030) calendar days of the date of the Board's decision. In the event the Board's order includes back pay, the employee shall provide the City with a sworn statement of gross earnings and unemployment compensation received since the effective date of the dismissal and supporting documentation of earnings and compensation. The City shall be entitled to offset earnings and unemployment compensation received during the period covered by the back pay award against the back pay due. The City shall tender any back pay awarded to an employee on or before thirty (30) days after receipt of the written final

decision and order of the Board or within fourteen seven (14) (7)-calendar days after of the date of receipt of the employee's sworn statement, which ever date is later.

- c) Appeals. Any appeal of an adverse decision shall be in the State-state District Court within thirty (30) calendar days of the Board's written final decision and order and according to the New Mexico Rules of Civil Procedure. Ord. Sec. 3-2-10(D), ROA 1994.
- d) Reconsideration. A motion to reconsider may be filed anytime before the written final decision and order of the Board is entered.

4.23 Decorum.

- a) The Chair of the Board is responsible for the control and decorum of the hearing or proceeding. The Chair may limit any public comment to the Public Comments Section of the hearing or proceeding. The Chair may establish time limitations on speakers.
- b) The Board may exclude or expel from ~~the a~~ hearing or proceeding any person, whether or not a party, who engages in violent, threatening, disruptive, or unduly disrespectful behavior. In the event of such exclusion or expulsion of a person for misconduct, the Board shall explain on the record the reasons for the exclusion or expulsion and may either proceed in the absence of the excluded person or recess such proceeding and continue at another time, as may be appropriate.
- c) After notice and hearing, the Board may suspend from practice before the Board any person who engages in violent, threatening, disruptive, or unduly disrespectful behavior. Upon a majority vote of the Board, the suspension shall be ordered for a period of time determined by the Board.

4.24 Compensation of Board Members. The Board ~~may require~~shall be compensated the costs of hearings pursuant to provided for in Section Sec. 3-2-14(E), ROA 1994. The City Clerk shall invoice the cost to the parties whenever the Board hears and decides any controversy between the parties. -to be paid in advance of any hearing.-

4.25 Appointment of a Special Master: The Board may appoint a special master at its discretion or by the request of the parties. Matters to be addressed by the Special Master shall be set forth by particularity in the appointing order. The Parties will equally bear the cost of the Special Master.

4.26 Voluntary Withdrawals of Complaints and Dismissals. A party may file a notice of voluntary withdrawal at any time. Dismissals may be filed by stipulation of the parties. The parties may file a notice of stay of proceedings for settlement negotiations and submit a stipulated dismissal pleading if a settlement agreement is reached. Voluntary withdrawals and dismissals shall be considered to be with prejudice by default, unless a compelling reason is proffered.

5 **GENERAL RULES.** Any matter not covered by these ~~rules~~Rules shall be governed by Robert’s Rules of Order (latest edition), or, if not covered by Robert’s Rules of Order, by a decision of the Chair, subject to the right of appeal.

PASSED AND ADOPTED THIS _____ DAY OF _____ 2017 BY A VOTE OF:
_____ FOR _____ AGAINST.

LABOR BOARD MEMBERS:

Theodore Baca

Juan Montoya

Michael Wartell

Appendix A to the Labor-Management Relations Board Rules and Regulations

BEFORE THE CITY OF ALBUQUERQUE
LABOR-MANAGEMENT RELATIONS BOARD

_____, Petitioner

_____, Respondent

SCHEDULING ORDER

Pursuant to the LMRB Rules, the Board enters the following scheduling Order:

1. This matter is set for merits hearing on _____ (date).

2. Motions to amend the pleadings or to join parties shall be filed by _____ (date).

*3. Petitioner(s) shall file with the Board a list of all lay witnesses who may be called to testify at hearing by _____ (date).

*4. Respondent(s) shall file with the Board a list of all lay witnesses who may be called to testify at hearing by _____ (date).

*5. Petitioner(s) shall file with the Board a list of all expert witnesses who may be called to testify at hearing by _____ (date).

*6. Respondent(s) shall file with the Board a list of all expert witnesses who may be called to testify at hearing by _____ (date).

7. Discovery shall be completed by _____ (date). Parties shall seek discovery sufficiently before this date so that persons responding to discovery reasonably may comply with discovery requests prior to the deadline.

8. All other motions shall be filed by _____ (date).

*9. All parties shall file with the Board an exhibit list by _____ (date). The exhibit list shall state the reasonable place where such exhibits may be inspected and copied.

10. The parties shall exchange exhibits by _____ (date).

*11. All parties shall file specific objections to other parties' proposed exhibits by _____ (date).

12. All parties shall file a final witness list by _____ (date). The final witness list shall list "will call" and "may call" witnesses and may include any witnesses listed on any party's earlier witness list but may not include additional witnesses except by leave of courtthe Board or consent of all parties.

13. Proposed findings of fact and conclusions of law shall be filed with the courtBoard by _____ (date).

14. Dates contained in paragraphs of this order marked with an asterisk (*) may be modified by written agreement of all parties, without Board approval, provided that the hearing date is not jeopardized. Only the Board, for good cause, may change other dates.

15. The Parties shall attend settlement conference by _____ (date), and _____ is appointed as facilitator.

IT IS SO ORDERED.

Board Chair

USE NOTE

1. Dates should be calendar dates, not “ _____ days after entry of this order”, or “ _____ days before trial”.

2. This form may be adapted to address specific case needs. For example, the Board may want to require settlement conferences or pretrial conferences.

[Modeled after the New Mexico Rules of Civil Procedure for the District Courts, Rule 1-016 NMRA, and Scheduling Order, 4-507 NMRA.]